[TR] Court Imposes a Ban on YouTube

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On 6 March 2007 the Istanbul First Criminal Peace Court ordered a blockage of any access to YouTube.com, a popular video-sharing website. The subject of the court ruling was a video that was deemed to insult Mustafa Kemal Ataturk, the founder of modern Turkey.

In the week preceding the Court's decision, the internet platform YouTube was used as a platform for a virtual conflict between Greeks and Turks who were placing videos on the website with offensive contents. According to news reports, the video, which was the subject matter in the dispute at hand, contained the statement that Ataturk and the Turkish people were all homosexual, and also inclduing words cursing the Turkish Flag.

Following certain complaints and the publication of images from the video in newspapers, the Istanbul Prosecuting Attorney responsible for press-media related crimes filed a lawsuit with the aim of having the video removed from the website of YouTube. Since the case was still under investigation, and in order to prevent further damages, the competent Court imposed a ban on any access to YouTube from the territory of Turkey. Its decision was based on the finding that Ataturk and the Turkish flag had been insulted by the video displaying swear words written in English on pictures of Ataturk and the Turkish Flag.

Following the Court's decision, the video was removed from the website and the next morning, after twelve hours of blockage, the Court annulled the ban on application of the Prosecuting Attorney.

At the moment, there are two bills regulating Internet related offences awaiting ratification by the Turkish Parliament. Since there are no laws in existence that regulate Internet related offences in Turkey, the Istanbul Press-Media Prosecuting Attorney based her complaint on general provisions. These provisions were those of the Turkish Code 5816, adopted on 25 July 1951, which stipulates crimes against Ataturk. It states that it is a criminal offence to insult or to curse Ataturk and determines that the person who commits this crime is convicted for up to three years imprisonment in Turkey.

Another relevant Code in this regard is the general Turkish Penal Code, which, under Article 301, regulates the insulting of Turkishness. According to the Article, an insult of Turkishness, the Turkish Republic or the Turkish Parliament is qualified

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as a criminal offence. A penalty from six months to up to three years imprisonment may be imposed. Moreover, an insult of the Turkish Government, the Turkish Judiciary Departments, the Turkish Army or the Turkish Police is also a criminal offence punished with imprisonment from six months to up to two years. If a Turk in foreign territory carries out the offence, the punishment will be increased by one third. If someone expresses his opinions or ideas and only criticises (not insults) the above-mentioned institutions, it shall be not considered as being an offence. The Article has given rise to controversial discussions and the EU has also demanded its revision. The reason for the criticism is that Article 301 of the Turkish Penal Code has resulted in prosecutions against leading Turkish intellectuals, including the author Orhan Pamuk, a Turkish Nobel Prize-winning author, and Hrant Dink, an Armenian-Turkish journalist murdered in January 2007. However, in contrast to what has been reflected in some media reports, the Court did not base its decision on Article 301 of the Turkish Penal Code, but only on the Turkish Code 5816.

Istanbul 1. Sulh Ceza Mahkemesi Docket (2007/384)

Istanbul First Criminal Peace Court, case No. 2007/384

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